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Blue Cross Blue Shield of Illinois

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA**

DANIELLE-SUSANNE K. WAGNER,

Plaintiff,

vs.

BLUE CROSS BLUE SHIELD OF  
ILLINOIS, A DIVISION OF HEALTH CARE  
SERVICE CORPORATION, A MUTUAL  
LEGAL RESERVE COMPANY,

Defendant.

Case No. \_\_\_\_\_

**NOTICE OF REMOVAL**

PLEASE TAKE NOTICE that Defendant Blue Cross Blue Shield of Illinois (“BCBSIL”) hereby removes the state court action captioned *Danielle-Susanne K. Wagner v. Blue Cross Blue Shield of Illinois, A Division of Health Care Service Corporation, A Mutual Legal Reserve Company*, Case No. 3AN-14-09431 CI, pending in the District Court for the State of Alaska, Third Judicial District at Anchorage (“Action”), to this Court pursuant to 28 U.S.C. §§ 1331, 1332, 1441, and 1446. The grounds for removal are as follows:

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## **THE REMOVED CASE**

1  
2 1. This is an action to recover health insurance benefits under a health  
3 care benefit program underwritten by BCBSIL, a division of Health Care Service  
4 Corporation, a Mutual Legal Reserve Company ("HCSC"). HCSC is an Illinois  
5 corporation whose principal place of business is in Chicago, Illinois. The plaintiff, a  
6 resident of Anchorage, Alaska, seeks to recover damages in the principal sum of  
7 \$23,871.35. Complaint, Ex. A, ¶¶ 7 & 9. Additionally plaintiff seeks to recover treble  
8 damages and punitive damages. Id., ¶¶ 24 & 29.

9  
10 2. The plaintiff filed her complaint on September 29, 2014, in the District  
11 Court for the State of Alaska, Third Judicial District at Anchorage. BCBSIL was  
12 served with a copy of the Complaint on October 7, 2014.

13 3. The action could have originally been filed in this court pursuant to (a)  
14 28 U.S.C. §§ 1332 and 1367, in that there is complete diversity of citizenship  
15 between the parties, and the amount in controversy is in excess of the minimum  
16 statutory amount of \$75,000; and (b) 28 U.S.C. §§ 1331 and 1441(a), in that  
17 plaintiff's claims are governed, in whole or in part, by the Employee Retirement  
18 Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001, *et seq.*

## **REMOVAL IS APPROPRIATE AND TIMELY**

19  
20  
21 4. This Notice of Removal is timely filed within 30 days after BCBSIL  
22 received the Amended Complaint. 28 U.S.C. §1446(b); *Eyak Native Village v.*  
23 *Exxon Corp.*, 25 F.3d 773, 779 (9<sup>th</sup> Cir. 1994) ("[R]emoval was within the 30-day  
24 period required by section 1446(b) and was timely"); *Vanvelzor v. Central Garden*

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1 & Pet Co., 3219534 \*1 (D. Alaska August 13, 2010) (notice of removal filed within  
2 30 days from the date defense counsel received the amended complaint was  
3 timely under U.S.C. §1446(b)).

4 5. Venue properly lies in the United States District Court for the District  
5 of Alaska pursuant to 28 U.S.C. §§ 81A and 1441(a) because Alaska constitutes  
6 one judicial district embracing the place where the action is pending.

7 6. This is a civil action falling within the court's federal question  
8 jurisdiction under 28 U.S.C. § 1331 and is one that may also be removed to this  
9 court based on diversity of citizenship under 28 U.S.C. §§ 1441 and 1446. In the  
10 latter case, "none of the parties in interest properly joined and served as  
11 defendants is a citizen of the State in which such action is brought" and removal is  
12 therefore appropriate. 28 U.S.C. § 1441(b).

13 7. Complete diversity of citizenship exists between the parties.

14 8. Plaintiff alleges that she is a resident of Anchorage, Alaska.  
15  
16 Complaint, Ex. A, ¶ 1.

17 9. A corporation is deemed to be a citizen of the state of its incorporation  
18 and the state in which it maintains its principal place of business. 28 U.S.C.  
19 §1332(c)(1); *Montrose Chemical Corp. of California v. American Motorists Ins. Co.*,  
20 117 F.3d 1128, 1132 (9<sup>th</sup> Cir. 1997). HCSC, of which BCBSIL is a division, is  
21 incorporated in the state of Illinois and has its principal place of business in  
22 Chicago, Illinois. Therefore, HCSC and BCBSIL are citizens of Illinois for purposes  
23 of determining diversity of citizenship. Neither HCSC nor BCBSIL were citizens of  
24  
25  
26

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1 the state of Alaska at the time the action was filed within the meaning of the Acts of  
2 Congress relating to the removal of cases. 28 U.S.C. § 1332(c)(1).

3 10. Accordingly, there is complete diversity among the parties, and  
4 removal to this court is proper pursuant to 28 U.S.C. § 1332(a)(1).

5 11. Pursuant to 28 U.S.C. § 1332(a), the amount in controversy in a case  
6 in which federal jurisdiction is based on diversity of citizenship must exceed  
7 \$75,000, exclusive of interest and costs. *Geographic Expeditions, Inc. v. Estate of*  
8 *Lhotka ex rel. Lholka*, 599 F.3d 1102, 1106 (9<sup>th</sup> Cir. 2010) (“A federal court has  
9 jurisdiction over the underlying dispute if the suit is between citizens of different  
10 states, and the amount in controversy exceeds \$75,000 exclusive of interest and  
11 costs”); *Borgen v. United Parcel Services*, 2006 WL 1096628 at \*1 (D. Alaska April  
12 25, 2006) (case properly removed where the complaint demonstrates that at the  
13 time of removal the amount in controversy exceeded \$75,000).

14 12. The complaint alleges that plaintiff is entitled to recover trebled  
15 damages based upon actual damages of \$23,871.35 plus punitive damages. It is  
16 clear from the complaint, therefore, that the amount in controversy in the action is  
17 greater than \$75,000, exclusive of interest and costs.

18 13. As such, all of the requirements for federal diversity jurisdiction under  
19 28 U.S.C. §1332(a) are satisfied and this case is removable in accordance with 28  
20 U.S.C. § 1441.

21 14. The disposition of plaintiff’s claims are in whole or in part governed by  
22 the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C.

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§1001, *et seq.* Therefore, this court has original jurisdiction of this action under 28 U.S.C. §1331 and 29 U.S.C. 1132(e) and the case is removable pursuant to 28 U.S.C. § 1441(a).

**PAPERS FROM REMOVED ACTION AND OTHER REQUIREMENTS**

14. As required by 28 U.S.C. § 1446(a), copies of all process, pleadings and orders in the action in BCBSIL's possession are attached hereto as Exhibit A (Summons and Notice to Both Parties of Judicial Assignment and Complaint) and incorporated herein by this reference.

15. Pursuant to 28 U.S.C. § 1446(d), BCBSIL is filing a written notice of this removal with the Clerk of the District Court for the State of Alaska, Third Judicial District at Anchorage. Copies of this Notice of Removal and the notice of filing this Notice of Removal directed to the Clerk of the District Court for the State of Alaska, Third Judicial District at Anchorage are also being served upon plaintiff as required by 28 U.S.C. § 1446(d).

WHEREFORE, BCBSIL respectfully removes this action from the District Court for the State of Alaska, Third Judicial District at Anchorage, pursuant to 28 U.S.C. §§ 1331, 1332, 1441 and 1446.

DATED at Anchorage, Alaska, this 6<sup>th</sup> day of November, 2014.

CLAPP, PETERSON, TIEMESSEN,  
THORSNESS & JOHNSON, LLC  
Attorneys for Defendant Blue Cross Blue  
Shield of Illinois

By /s/ John B. Thorsness  
John B. Thorsness, ABA No. 8211154

**CERTIFICATE OF SERVICE**

I hereby certify that on this 6<sup>th</sup> day of November,  
2014, a copy of the foregoing document  
was served via US Mail on:

Steven Jones, Esq.  
Jones Law Group, LLC  
PO Box 241546  
Anchorage, AK 99524-1456

By: /s/ John B. Thorsness